



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

**FILED**  
06-15-12  
04:59 PM

Fred Coleman, Steven Wallace, Larry L.  
Vaughn, and Ruth Dargitz,

Complainants,

vs.

Odd Fellows Sierra Recreation  
Association, a California Corporation,

Defendant.

CASE NO. C-1203017

**ODD FELLOWS SIERRA RECREATION ASSOCIATION'S  
VERIFIED ANSWER**

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**June 14, 2012**

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Defendant.

**VERIFIED ANSWER**

Pursuant to Rule 13.1 of the Commission’s Rules of Practice and Procedure, and the Instructions to Answer dated April 2, 2012, from the California Public Utilities Commission (“Commission”) directed to counsel for Defendant Odd Fellows Sierra Recreation Association (“Recreation Association”), Recreation Association, in answer to Complainant Fred Coleman’s, Steven Wallace’s, Larry L. Vaughn’s, and Ruth Dargitz’s (“Complainants”) Verified Complaint, admits, denies, and alleges as follows:

**I. INTRODUCTORY ALLEGATIONS AND BACKGROUND**

By way of background, and in support of its affirmative defenses, Recreation Association alleges the following facts:

1. Recreation Association is a California corporation that, pursuant to various agreements, sells water to Odd Fellows Sierra Homeowners’ Association (“Homeowners’ Association”) and performs various services on behalf of Homeowners’ Association for the lot owners of those certain subdivisions in Tuolumne County, California known as I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 and I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 2 (collectively, the “Park”). The Park consists of approximately 364 lots.

2. Homeowners’ Association is a California non-profit mutual benefit corporation, whose members include lot owners of the Park. Upon information and belief, between June 1,

2011 and May 27, 2012, Complainants were officers and/or directors of Homeowners' Association and lot owners of the Park.

3. Recreation Association owns wells, storage tanks, pipes, and related water delivery mechanisms that deliver water from wells on Recreation Association's property that is outside the Park to Homeowners' Association ("Odd Fellows Water System").

4. The terms of Recreation Association's water deliveries to Homeowners' Association were set by a Water Use Agreement ("Agreement") executed between the Homeowners' Association and the Recreation Association on October 12, 1986. The Agreement is attached hereto as **Exhibit A**.

5. Pursuant to the Agreement, Recreation Association sold water to the Homeowners' Association and the Homeowners' Association sold such water to the lot owners of the Park, including Complainants. Only lot owners of the Park take water from the Odd Fellows Water System.

6. Recreation Association is not currently offering, and has never offered, water service to the public at large. Since 1986, Recreation Association's only water delivery arrangement has been with Homeowners' Association.

7. The purpose of the Agreement was to permit Homeowners' Association to obtain water from the Odd Fellows Water System "for use by its members on a not-for-profit basis." [Agreement, Recitals].

8. Pursuant to the Agreement, Recreation Association furnished Homeowners' Association with "such water as may be necessary for the domestic use". [Agreement Term 1].

9. Recreation Association does not guarantee a specific quantity or quality of water to be supplied to Homeowners' Association. [Agreement Term 4].

10. Recreation Association bills Homeowners' Association a fixed annual fee in exchange for water service to Homeowners' Association. Pursuant to the Agreement, the fee is increased yearly in an amount equal to the amount by which Recreation Association's expenses in providing the water to Homeowners' Association have increased. Between 1986 and May 31, 2012, the fees paid by Homeowners' Association to Recreation Association for provision of water and the other services provided by Recreation Association to Homeowners' Association were less than the expenses incurred by Recreation Association in providing such services.

11. Recreation Association owns certain real property that is adjacent to the Park from which Recreation Association sells timber.

12. As the fees paid by the Homeowners' Association are less than the expenses of maintaining the Odd Fellows Water System and providing the other services that Recreation Association provides to Homeowners' Association, the Recreation Association has had to use the profits that Recreation Association receives from the sale of timber from its property (as referenced in the preceding paragraph) to subsidize such services.

13. Homeowners' Association acknowledged in 1986 that Recreation Association is not a public utility. [Agreement Term 4]. Recreation Association's water service relationship with Homeowners' Association has not changed in any significant way since that time.

14. In September 2011, Recreation Association billed Homeowners' Association \$302,120.00 for the water services provided by it in accordance with the terms of the Agreement and for the other services provided by Recreation Association. Upon information and belief, Homeowners' Association collected approximately \$286,350.00 from the lot owners of the Park for such services. However, the Homeowners' Association refused to make payment to Recreation Association for the amounts due to Recreation Association as set forth above other than \$69,350.00.

15. Although the Homeowners' Association refused to pay Recreation Association in full for the water services provided by it in accordance with the terms of the Agreement and for the other services provided by Recreation Association, Recreation Association did not seek payment from the individual lot owners of the Park, including Complainants, but continued to provide water services and the other services it was previously providing to the Homeowners' Association, and sought payment from Homeowners' Association directly.

16. The Agreement was set to expire by its own terms on October 11, 2011. However the parties agreed to extend the term of the Agreement to January 10, 2012. As a result of the failure of the Homeowners' Association to pay Recreation Association in full for the water services provided by it in accordance with the terms of the Agreement and for the other services provided by Recreation Association, the Recreation Association did not further extend the Agreement and it thus expired on January 10, 2012.

17. Following the dispute with Homeowners' Association as referenced above, Recreation Association initiated the process of establishing a Community Services District

(“New CSD”) to manage the Odd Fellows Water System. Recreation Association is in negotiations with Tuolumne County Local Area Formation Committee to set the service area for this new district.

18. Once New CSD is established, Recreation Association intends to transfer the Odd Fellows Water System to New CSD, which will provide water service to the Park. Recreation Association will no longer provide water service after this transfer occurs.

## **II. ANSWERS TO SPECIFIC ALLEGATIONS**

As to the specific allegations contained in Complainants’ Verified Complaint, Recreation Association admits, denies, and alleges as follows:

19. As to the allegations contained in Section D of the Complaint, Recreation Association has insufficient information to verify these allegations, and so denies these allegations on information and belief.

20. As to the allegations contained in Section E of the Complaint, Recreation Association denies the allegation that its legal name is “Odd Fellows Sierra Recreation Association, Inc.” The legal name of the Defendant is Odd Fellows Sierra Recreation Association. Recreation Association admits the remaining allegations in this section.

21. As to the allegations contained in Section F, Sentence 1, of the Complaint, which alleges that “Odd Fellows Sierra Homeowners’ Association is a non-profit mutual benefit corporation whose directors are democratically elected by owners of all 281 lots within the Odd Fellows Sierra Park,” Recreation Association has insufficient information to verify how Homeowners’ Association is governed, and therefore denies this allegation on information and belief.

22. As to the allegations contained in Section F, Sentence 2, of the Complaint, Recreation Association denies on information and belief that Recreation Association supplies water for all lot owners within the Odd Fellows Sierra Park. Recreation Association cannot verify whether every current lot owner receives water, because Homeowners’ Association may terminate a lot owner’s water service for non-payment of the water service fees charged by Homeowners’ Association, independent of Recreation Association.

23. As to the allegations contained in Section F, Sentence 3, of the Complaint, which alleges that “[t]he water system is required to be regulated by the CPUC under California Public

Utility Code 2701 and 2702, but is not,” Recreation Association alleges that this is a legal conclusion requiring no answer, but denies this allegation if it is taken to be factual.

24. Answering the allegations contained in Section F of the Complaint, as to Sentence 4, which alleges that “OFSRA consists only of Odd Fellows and Rebekahs; OFSRA provides no financial transparency concerning costs it incurs in providing water to lot owners,” Recreation Association denies the allegations contained in this section.

25. Answering the allegations in Section G, subsections (1) through (4), Recreation Association alleges that these allegations are legal conclusions requiring no answer. Insofar as any factual response is deemed necessary, Recreation Association denies each and every allegation contained in each and every such paragraph.

26. Answering the allegations in Section G, subsection (5), Recreation Association alleges that this is a legal conclusion requiring no answer. Recreation Association is separately moving for a stay of this proceeding. Recreation Association's Motion for Stay, filed concurrently with this Answer, will explain why a stay of the proceeding is appropriate.

### **III. AFFIRMATIVE DEFENSES**

Recreation Association alleges the following affirmative defenses in response to the allegations contained in Complainants' Verified Complaint:

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state facts sufficient to constitute a cause of action.

#### **SECOND AFFIRMATIVE DEFENSE**

The California Public Utilities Commission lacks jurisdiction to award the relief requested by Complainants.

Recreation Association is not subject to the jurisdiction of the Commission because Recreation Association is not a public utility under Public Utilities Code §§ 2704 and 2706(b). The Odd Fellows Water System owned by Recreation Association is not available to members of the public at large, it is only available to lot owners of the Park through the Agreement between Recreation Association and Homeowners' Association. Water from the Odd Fellows Water System is available only to lot owners of the Park through the Homeowners' Association for domestic use; and the Homeowners' Association had previously contracted directly with Recreation Association for that service.

### **THIRD AFFIRMATIVE DEFENSE**

Through its conduct with respect to the matters complained of in the Complaint, Complainants have waived any right to the relief they requested in the Complaint.

Homeowners' Association agreed in 1986 pursuant to the Agreement that Recreation Association was not a public utility. Recreation Association's water service relationship with Homeowners' Association has not changed since that time. Complainants cannot now claim that Recreation Association has become a public utility simply because Homeowners' Association's business relationship with Recreation Association has deteriorated as a result of the actions of Complainants.

### **FOURTH AFFIRMATIVE DEFENSE**

Complainants are barred from receiving any relief requested in the Complaint by the doctrine of laches due to their unreasonable delay in bringing the claims contained in the Complaint.

Homeowners' Association agreed in 1986 that Recreation Association was not a public utility. Complainants have had numerous opportunities to challenge that status since 1986, but have failed to do so. Recreation Association's water service relationship with Homeowners' Association and Complainants has not changed since that time.

### **FIFTH AFFIRMATIVE DEFENSE**

Recreation Association lacks sufficient information or belief to determine whether it may have additional, as yet unstated, affirmative defenses to the Complaint, and based thereon, reserves the right to seek leave to add further affirmative defenses.

## **IV. CONCLUSION**

For the above-stated reasons, Defendant requests that the Commission deny the relief sought by Complainant and dismiss the Complaint.

Respectfully submitted,

DAMBACHER, TRUJILLO & WRIGHT

By: /s/ Timothy T. Trujillo

TIMOTHY T. TRUJILLO, ESQ.

Attorneys for Defendant



## VERIFICATION

I am the President of Defendant Odd Fellows Sierra Recreation Association and am authorized to make this verification on its behalf. The statements in the foregoing Verified Answer are true of my own knowledge, except as to the matters which are therein stated on information and believe, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 14, 2012, at Sonora, California.

/s/ Del Wallis

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By: Del Wallis